

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

United States of America,

Plaintiff,

v.

Michael J. Smith,

Defendant,

and

New York State Teachers' Retirement
System,

Garnishee.

Civil Action No.: 1:23-CV-1258 (GLS/DJS)

**UNITED STATES' *EX PARTE*
APPLICATION TO FILE UNDER SEAL**

Pursuant to Local Rule 5.3, the United States requests that the Court temporarily seal this case, for up to 21 days, to allow the Government time to complete service on the Garnishee and for Garnishee to determine whether it possesses any nonexempt assets subject to garnishment.

The United States requests that this case be temporarily sealed to preserve assets for crime victims. A temporary sealing will significantly reduce the potential for the debtor to dissipate the subject assets during this brief period.

Applications for writs under the Federal Debt Collection Procedures Act, 28 U.S.C. §§ 3001, *et. seq.*, may be submitted *ex parte* without notice to judgment debtor and interested parties until after the process has been served on whomever is holding the subject property to avoid transfer or dissipation of non-exempt assets. *See* 28 U.S.C. § 3004(c). If this Court issues a Writ of Garnishment, the Government will serve it on the defendant, who will have the right to request a hearing, and on all interested parties. The Government will then cause the returns of service to

be docketed. Upon filing of the answer of the Garnishee, the Court should lift the seal and make all filings and orders in this case available to the public.

For the foregoing reasons, the Government respectfully requests that the Court grant its Application.

Dated: October 6, 2023

Respectfully submitted,

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United States Attorney

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SEALING ORDER

The United States has applied, pursuant to Local Rule 5.3, for an order temporarily sealing this case.

The Court determines that temporary sealing is appropriate, as it will reduce the potential of the defendants dissipating, or causing others to dissipate, the subject assets while the Government completes service on the Garnishee and the Garnishee determines whether it possesses any nonexempt assets subject to garnishment.

IT IS THEREFORE ORDERED that this case be sealed.

IT IS FURTHER ORDERED that, upon completion of service on the Garnishee, the Government shall cause the return of service to be docketed with the Court.

IT IS FURTHER ORDERED that, upon the earlier of the filing of the Garnishee's answer or 21 days, the Clerk of Court shall unseal this case unless the Garnishee has failed to answer by that date.

IT IS FURTHER ORDERED that, if the Garnishee fails to answer within 21 days of the date of this Order, then the Government shall have 7 days to file a status report in which it addresses both how it wishes to proceed in this case and whether an extension of the seal is appropriate.

SO ORDERED this 11 day of Oct, 2023.


UNITED STATES MAGISTRATE JUDGE